



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

AMENDED CERCLA SECTION 106 CONFERENCE SUMMARY for the GULFCO MARINE MAINTENANCE SUPERFUND SITE CERCLA Docket Number 06-05-05

The following is an amended summary of the significant issues raised at the Gulfco Marine Maintenance Superfund Site CERCLA Section 106(a) conference. The United States Environmental Protection Agency, Region 6 (EPA) issued a CERCLA Section 106(a) unilateral administrative order (UAO) dated May 23, 2005 to Dow Chemical Company, LDL Coastal Limited, Sequa Corporation, Jack Palmer and Ron Hudson on June 6, 21005. The UAO was sent to James Morriss, representing Dow Chemical Company by electronic mail on June 6, 2005, and was served on the Respondents some time after that date. As a result, the Respondents requested a conference to discuss the implementation of the response actions required by the UAO. The CERCLA Section 106(a) conference occurred on June 30, 2005, and representatives on behalf of Dow Chemical Company and Sequa Corporation (on behalf of its subsidiary Chromalloy American Corporation) (hereinafter, Respondents) and EPA participated.

Representatives appearing before the Chairman of the CERCLA Section 106(a) conference, Ben J. Harrison, include the following individuals:

For the EPA:

Ms. Barbara Nann, Superfund Attorney, EPA;
Mr. Gary Miller, Superfund Remedial Project Manager, EPA;
Mr. Carl Bolden, Superfund Enforcement Officer, EPA.; and
Ms. Dyianne Twine, Superfund Paralegal, EPA.

For the Respondents:

Ms. Kirby Tyndall, PBW, LLC for Respondents;
Mr. Eric Pastor, PBW, LLC for Respondents;
Mr. James Morriss, Thompson & Knight, for Dow Chemical Company;
Ms. Elizabeth Webb, Thompson & Knight, for Dow Chemical Company;
Mr. Tobias Smith (via telephone), Strasburger, for Sequa Corporation; and
Ms. Sandi Van Wormer (via telephone) for Dow Chemical Company.



Upon opening the conference, and attendance sheet was circulated and attendees introduced themselves. The Conference Chairman apprized the parties that, as Regional Judicial Officer, he was the neutral Agency official chairing the discussions for the CERCLA Section 106(a) conference. The Chairman elaborated on his responsibility to set and direct the agenda for

the conduct of the CERCLA Section 106(a) conference, and prepare a written conference summary. It was noted that the parties would be supplied a draft of the summary and provided an opportunity to submit comments on that summary. Also noted was the parties' ability to submit their own written summary of issues presented.

The purpose of the CERCLA Section 106(a) conference was to afford the Respondents the opportunity to discuss with EPA representatives, their intentions to comply with the UAO, implementation of the UAO, and UAO issues of concern. As such, the Conference Chairman noted that EPA representatives would not be required to discuss issues concerning liability, selection of the remedy, and settlement. However, the parties were informed that within five (5) business days from the date of the CERCLA Section 106(a) conference, the Respondents could submit written arguments concerning liability, sufficient cause defenses and factual issues related to the facts determined in the UAO. In this case, Respondents have until July 8, 2005 to submit these arguments.

Following his introductory remarks, the Chairman asked Respondents whether they wished to discuss the UAO Respondent by Respondent or page by page and stated that they could make introductory remarks on behalf of their clients. Mr. Morriss stated that the Respondents present were unified, that he would make some introductory remarks and then would proceed with questions and seek clarification on certain items in the UAO.

In opening remarks, Respondents stated that if they are compelled to proceed under the terms of the UAO, Respondents plan to notify EPA of their intent to comply within the time frame required by the UAO. Respondents noted that negotiations are proceeding with the hope that an Administrative Order on Consent bringing the site under the State Voluntary Cleanup Program (VCP) could replace the Unilateral Order. In addition, Respondents expressed their desire to take a proactive leadership role in all community relations documents, including fact sheets, press releases, public meeting information and the Community Relations Plan, subject to EPA review and approval. The Respondents also wish to take a leadership role in all public meetings, community interview and in meetings with individual stakeholders. Respondents stated that they have already begun the process of identifying stakeholders and have almost completed compilation of a stakeholders list. The Respondents indicated that they have also prepared a preliminary internal draft Community Relations Plan based on a model provided by EPA. EPA stated that they were developing the stakeholders list and that they could not commit to allowing Respondents to draft the community involvement plan. EPA indicated that they would raise the issue to their management and it would be the decision of EPA's Community Relations Section in the Program Management Branch as to what role Respondents would have. Respondents requested that, at a minimum, they be allowed to review and comment on all public communications before they are issued and to be present in all public meetings, community interviews and meetings with individual stakeholders. EPA replied that if the UAO becomes effective, they would work with Respondents on the public involvement regarding this site, but that it was the community relations section's decision as to what role Respondents would have.

Respondents mentioned the State voluntary cleanup program in regards to this site. They expressed that there was a second window for the VCP to be available, once the Remedial Investigation/Feasibility Study (RI/FS) in the UAO was completed.

The parties then proceeded through the UAO document with questions and comments. The significant issues were:

(1) On page 2, paragraph 4, Respondents sought clarification of the date for providing copies of the UAO to laboratories, consultants, contractors and subcontractors. EPA responded that a copy should be given to these entities within 14 days of retaining them. Respondents inquired whether this applied to subcontractors and how far down should they provide a copy. EPA stated that everyone retained should be provided a copy of the UAO, but each firm or entity should get a copy, not necessarily each individual working at the site.

(2) Respondents wished it to be noted that they take exception to the characterization made in paragraph 38 on page 10. Respondents state their belief that instead of being phrased as it is, this paragraph should indicate that parties attempted to reach an agreement on terms of an AOC and should reflect that the UAO was issued during negotiations. EPA noted the objection.

(3) Next, a paragraph numbering error was noted. On page 13, there are two paragraphs enumerated as 42.

(4) Respondents believe the first paragraph 42 on page 13 of the UAO seems inconsistent with paragraph 65 on page 19. Notice to EPA of selection of a project coordinator is required before notice of intent to comply. EPA recognized this and agrees to file an amended UAO so that notice of selection of the project coordinator is done at the same time as notice of intent to comply with the Order, no later than 14 days after the effective date of the UAO.

(5) There were several questions regarding the second paragraph 42 on page 13:

(a) The UAO requires Respondents to provide the qualifications of all personnel carrying out work on the site. They believe this term should be deleted, requiring them only to provide qualifications for contractors, subcontractors and laboratories. EPA indicated that it was their intent to get qualifications of entities, not individuals, but they will have to get with their management and get back to Respondents on this change.

(b) The reference to Section IX Paragraph 2 is an incorrect reference. This should reference Section XV Paragraph 65.

(c) Respondents ask for clarification regarding the requirements for a contractor to have a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." Specifically, they ask whether the subcontractor must have a quality management plan (QMP) under this provision. EPA stated the assumption that subcontractors will operate under the prime contractor's QMP. EPA agreed that any subcontractor can work under the hiring contractor's QMP, and does not have to submit an individual QMP to EPA.

(d) Respondents ask for clarification of the requirement to apprise EPA in writing of changes in personnel. Respondents suggest combining the contractor, subcontractor and laboratory into one term and replacing the word personnel with that. EPA responded that the intent, as before, is to cover entities, not their individual employees, but will have to get back to management regarding changes to the text and will advise Respondents of EPA's decision.

(6) Respondents noted that, if the Respondents are compelled to proceed under the UAO, it is their plan to advise EPA of their intent to comply with the UAO and to work cooperatively with EPA. They wish the Administrative Record to reflect that each Respondent reserves their right to refrain from taking any action and to assert "sufficient cause" under CERCLA at any time, if such party deems the requested action to be illegal or arbitrary.

(7) Respondents ask whether monthly progress reports in paragraph 53 on page 16 can be submitted electronically. EPA stated that they would like all formal reports in writing, directed to Mr. Miller with a copy to Ms. Nann.

(8) Respondents ask for clarification of the term "raw data" in paragraph 53 on page 16. When results are initially supplied by laboratories, a summary, not data, is usually sent. EPA replied that they want all the supporting data, not just the summary but the QA/QC and backup data. This should be supplied to EPA when Respondents receive it. All data generated should be provided to Respondents. It is understood that preliminary data will probably be sent one month with the final report and supporting data not available until the next month.

(9) On page 18 at paragraph 62, Respondents again wish to say that the State may become involved through the VCP after the RI/FS and before remediation begins. This involvement could include remedy selection and completion. Respondents indicated several times their desire to work with EPA to return this site to the State VCP for remedy selection and completion.

(10) Respondents ask whether the Administrative Record Repository has been developed. EPA states that it has been developed and can provide Respondents with the location. It

is unknown whether a Notice of Availability has been published. EPA will inform Respondent whether the Notice has been published.

(11) Paragraphs 70 and 71 on page 20 include QA/QC requirements. Respondents point out that the guidance cited appears to be for chemical labs. They ask whether the same systems apply to geotechnical labs. They state that these labs have their own QA/QC procedures. EPA replied that each lab has to have a QA/QC program. However, they do not necessarily have to have the same one as a chemical lab. Paragraph 71 also allows for "equivalent documentation as determined by EPA." The QAPP should outline the specifics of the geotechnical laboratory's program for the EPA to determine equivalency.

(12) Respondents express some concern over the requirement to obtain access agreements within 30 days of the effective date of the UAO as required by paragraph 72. Respondents assert that they won't know whether they need access within 30 days because they won't have identified all the land to which access is needed. They ask that this be changed to require access agreements within 30 days of identifying property where access is needed. EPA stated that they will discuss this and get back to Respondents.

(13) Respondents ask from whom financial assurance is required, all PRPs or just those performing work under the UAO. EPA states that financial assurance required by paragraph 83 of the UAO is only required from entities actually performing work. As a result, only Dow Chemical Company and Sequa Corporation (on behalf of its subsidiary Chromalloy American Corporation) will have to provide the assurance.

(14) Respondents inquire whether the certification regarding insurance coverage required in paragraph 84 on page 23 is the form listing coverage and limits or whether some additional information is required. EPA responded that the form is all that is needed. Respondent then asked about insurance for those not working on site, such as lab technicians. EPA indicated that, as a general matter, insurance is only required for those working on site. In addition, any new contractor or subcontractor will have to provide insurance certificates to EPA prior to conducting any activities at the site.

(15) Under the Statement of Work attached to the UAO, paragraph 16 requires a scoping phase meeting. Respondents asked who should attend this meeting. EPA stated that Respondent should draft an agenda and forward this to Mr. Miller. Mr. Miller would then ensure that those needed from EPA would attend.

(16) Regarding task 2 on page 7 of the Statement of Work where Respondents are required to prepare a draft RI/FS work plan for EPA's review, Respondents inquired about the comment process as well as how they should proceed if there is a deadline that can't be met. EPA responded that the draft would be sent to EPA and comments would be provided in writing. Then, a meeting could be scheduled if Respondents or EPA thought it necessary. For any deadlines that Respondents believe they will not meet, they

should send a letter to EPA indicating the deadline and specifying the reasons why it won't be met as well as an alternate date. If the rationale and alternate date are reasonable, EPA will consider the change.

(17) Respondents note that the RI/FS workplan, FSP and QAPP are all due at the same time. They suggest submitting the workplan first as approval of that is needed before proceeding with other items. EPA indicated that sequential submission of the items required was acceptable, but noted that all three must be submitted within the 60 day deadline established in Task 3, paragraph 25 on page 8 of the Statement of Work.

(18) Also under Task 3, paragraph 28 on page 10 of the SOW requires a demonstration that all analytical labs be qualified and that if a laboratory is not in the Contract Laboratory Program, the lab's QA program must be submitted to EPA for approval. Respondents would like to include this as part of the QAPP. EPA indicated that this was acceptable as long as there was ample opportunity for EPA review prior to a new lab initiating work. The required information would need to be submitted separately if there is a change in laboratories.

(19) Respondents expressed concern with meeting the 20 day deadline for the Site Health and Safety Plan required by Task 4 on page 10 of the SOW. The issue is that additional work may be identified when preparing the SAP and the Health and Safety Plan would not include items for the new tasks. EPA stated that this plan is required early because of its importance as well as the necessity to cover any activities that may occur prior to sampling. EPA noted that this plan can be updated whenever new work is identified.

(20) For Task 6, Respondents would like to use a "step-wise" approach where courses of action are pre-planned depending on what is discovered at the site. The "triad" approach is consistent with this strategy. EPA agrees and supports this type of approach.

(21) Respondents plan to follow a "step-wise" approach to the risk assessment required by paragraph 37, subparagraph (d) and follow the requisite 8 steps in a sequential fashion. The Respondents note that this "step-wise" approach is different than what EPA had requested in prior discussions. EPA agrees that the RI/FS under the UAO is different than what had been discussed previously. Respondents indicated a desire to use a risk assessment approach. EPA noted that this was something Respondents were interested in. EPA indicated that the sequential method is an acceptable approach.

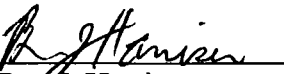
(22) Respondents asked whether the State had been notified of the issuance of the UAO and, if so, could Respondents be given a copy of that notice. EPA responded that the State was notified and a copy of the notice would be sent to Respondents.

(23) Respondents inquired as to the progress on the FOIA regarding Parker Drilling. Ms. Nann committed to check on this and get back to Mr. Morriss.

(24) Respondents asked whether there were any further discussions with Respondents Hudson and Palmer. EPA stated that there had been discussions regarding access and those individuals agreed to allow access to their property.

(25) Respondents inquired whether an access agreement was necessary since these individuals have agreed. EPA stated that a written agreement would be advisable since neither Mr. Hudson nor Mr. Palmer would be present during the activities.

After the above issues were discussed, the CERCLA Section 106(a) conference adjourned. The parties provided comments on an initial summary. Those comments that were consistent with the Chairman's notes have been added to this amended Conference summary. All comments will be provided to EPA for placement in the record.


Ben J. Harrison
Regional Judicial Officer

8-02-05
Date